

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RICHARD WALLACE,

Plaintiff,

v.

Case No. 09-11991

Honorable Patrick J. Duggan

DENNIS LLOYD, DOCTOR,

Defendant.

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**OPINION AND ORDER (1) DENYING DEFENDANT'S MOTION TO DISMISS  
BASED ON EXHAUSTION AND (2) GRANTING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on March 1, 2010.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Plaintiff filed this *pro se* civil rights action against Defendant pursuant to 42 U.S.C. § 1983 on May 26, 2009. Plaintiff filed an amended complaint on October 9, 2009. When he filed this lawsuit, Plaintiff was a federal prisoner who had been housed at the Genesee County jail in Flint, Michigan. Defendant is a doctor who provides medical services to Genesee County jail inmates. In his complaints, Plaintiff alleges that Defendant was deliberately indifferent to his medical needs in violation of his rights under the Fourth, Fifth, Fourteenth, and Eighth Amendments and retaliated against him for filing this lawsuit in violation of his First Amendment rights.

Defendant filed a motion to dismiss on October 15, 2009, contending that Plaintiff failed to exhaust his administrative grievance remedies before pursuing this lawsuit. (Doc. 15.) On November 6, 2009, Defendant filed a motion for summary judgment contending that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law with respect to Plaintiff's claims.<sup>1</sup> (Doc. 20.) This Court had previously assigned this lawsuit for all pretrial matters to Magistrate Judge Charles Binder on September 28, 2009. (Doc. 11.)

On January 14, 2010, Magistrate Judge Binder filed a Report and Recommendation (R&R) recommending that this Court deny Defendant's motion to dismiss and grant Defendant's motion for summary judgment. (Doc. 31.) With respect to the first motion, Magistrate Judge Binder concluded that Plaintiff made a showing of a reasonable belief that he exhausted his administrative remedies. (R&R at 6.) With respect to Defendant's motion for summary judgment, Magistrate Judge Binder found that Plaintiff failed to allege facts in his complaints or in response to Defendant's motion to state a claim under the Fourth, Fifth, or Fourteenth Amendments. (*Id.*) As to Plaintiff's claims pursuant to the Eighth and First Amendments, Magistrate Judge Binder concluded that the undisputed evidence does not establish a violation of Plaintiff's rights. (R&R at 11-12, 14-15.)

At the conclusion of his R&R, Magistrate Judge Binder advises the parties that they may object to and seek review of the R&R within fourteen days of service upon

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<sup>1</sup>The Court docket identifies this pleading as a motion to dismiss but it in fact is titled a motion for summary judgment.

them. (R&R at 15-16.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (*Id.* at 15 (citations omitted).) Neither party filed objections to the R&R.

This Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Binder.

Accordingly,

**IT IS ORDERED**, that Defendant’s motion to dismiss is **DENIED**;

**IT IS FURTHER ORDERED**, that Defendant’s motion for summary judgment is **GRANTED**.

PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:

Richard Wallace  
Register #26340-039  
Genesee County Jail  
1002 Saginaw Street  
Flint, MI 48502-1499

Ronald W. Chapman, Esq.

Magistrate Judge Charles Binder